

MINUTES

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Thursday, May 1, 2003

Division Four

**A099565 -- The People v. Michael Kupferman.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Thursday, May 1, 2003

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J. and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Arnold Stamps, Bailiff.

A099011 Insurance Commissioner  
v.  
Golden Eagle Insurance Company  
Cause called. Wayne Burkamp argued on behalf of appellant Granite Management Corporation. Timothy A. Gonzales argued for respondent Golden Eagle Insurance. Cause submitted.

At this point the Court reconstitutes itself from Reardon, Acting P.J., Sepulveda, J. and Rivera, J. to Kay, P.J., Reardon, J. and Rivera, J.

A098765 People  
A100843 v.  
Juan Nava Zaragoza  
Causes called. Alfons G. Wagner argued for appellant Zaragoza. Deputy Attorney General Jill Thayer argued for respondent. Causes submitted.

At this point the Court reconstitutes itself from Kay, P.J., Reardon, J. and Rivera, J. to Kay, P.J., Sepulveda, J. and Rivera, J.

A098285 Self Health Resource Center  
v.  
Christopher Grell et al.  
Cause called. Daniel L. Mitchell argued for appellant Self Health Resource Center. Christopher Grell argued for respondents. Cause submitted.

A100519 Ann Marmesh

v.

California Pacific Medical Center et al.

Cause called. Kenneth Morris argued for appellant Marmesh. Blaise S. Curet argued for respondents. Cause submitted.

The Court adjourned at 10:38 a.m.

Friday, May 2, 2003

Division One

**A098662 -- The People v. Shadrick Peter Williams.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

**A100199 -- Bear-Dog Hoffman v. Jack Boujaklian.**

By the Court: Appellant's motion to reinstate appeal is denied. Haerle, Acting P.J.

**A101858 -- In re Jaylenn J., a Person Coming Under the Juvenile Court Law. Superior Court of the State of California, County of Contra Costa v. Markesha J.; Contra Costa County, Children and Family Services Bureau, R.P.I.**

The petition is denied on the merits. (Cal. Const., art. VI § 14 *Kowis v. Howard* (1992) 3 Cal.4th 888; § 366.26, subd. (1)(1).) Given the nearness of the section 366.26 hearing set for June 10, 2003, our decision is final as to this court immediately. (Rule 24 (b)(3).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Five

**A101759 -- Ming F. Woo, et al. v. The Superior Court of San Francisco County; Eric W. Lien et al., R.P.I.**

By the Court:\* Let a peremptory writ of mandate issue directing respondent superior court to vacate its order of February 21, 2003, rejecting petitioners' challenge under section 170.6 as untimely, and to enter a new and different order accepting the challenge. The temporary stay will be dissolved upon the finality of the opinion as to this court. (Cal. Rules of Court, rule 24(b).) (Not for Publication.)

\*Before Jones, P.J., Stevens, J., and Gemello, J.

Monday, May 5, 2003

Division One

**A099286 -- The People v. Michael Wade Kennon.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A098104 -- Michael Escamilla, M.D. v. University of California at San Francisco, et al.**

By the Court: Having considered the motion by appellant to dismiss the University's purported cross-appeal and the briefs presented by both sides thereon, it is ordered that appellant's motion is granted. It is further ordered that the University's request to file a supplemental brief is granted. The supplemental brief shall be filed on or before June 2, 2003. Haerle, Acting P.J.

**A099942 -- In re Jessie L., a Person Coming Under the Juvenile Court Law. The People v. Jessie L.**

The order adjudicating appellant a continued ward of the court pursuant to Welfare and Institutions Code section 602 and placing him at the CYA is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A099785 -- Michael Semler v. The Guardian Life Insurance Company of America.**

The appeal is dismissed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Division Three

**A098316 -- In re Rafael D., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. Jill D.**

The jurisdictional and dispositional orders are affirmed. Parrilli, J. We  
Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

Tuesday May 6, 2003

Division Two

**A097322 -- The People v. Yikalo Hiskas.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J.  
(Not for Publication.)

**A100291 -- The People v. Kelvin Rex Jones.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J.,  
Ruvolo, J. (Not for Publication.)

Division Three

**A101416 -- Angelina Alioto v. Kathleen Sullivan Alioto; Maxwell Keith et al.**

We conclude that the statement of decision from which Kathleen takes her appeal is an appealable order, entered in the trust proceedings in which Kathleen was represented by her attorney, Karen Hawkins. The time within which to take an appeal began running from the date that the statement of decision was mailed to Hawkins. The notice of appeal was not filed until nearly six months later. Therefore, under rule 2(a), the appeal is untimely. The motion to dismiss the appeal is granted. Pollak, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Five

**A100278 -- Samuel G. Chia v. Beverly E. Narayan.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.  
(Not for Publication.)

**A098237 -- Isabel Jessop v. Louis Stayer.**

The judgment is affirmed. Simons, J. We Concur: Stevens, J., Gemello, J.  
(Not for Publication.)

Tuesday May 6, 2003 (continued)

**A101691 -- Frank Scholtz v. City and County of San Francisco; The People, R.P.I.**

By the Court:\* Let a peremptory writ of prohibition issue restraining respondent superior court from taking any further action upon count II in *People v. Scholtz*, No. 187427, other than dismissal. The temporary stay will be dissolved upon the finality of the opinion as to this court Cal Rules of Court, rule 24(b).)  
(Not for Publication.)

\*Before Jones, P.J., Stevens, J., and Gemello, J.



Wednesday, May 7, 2003

Division Five

**A098136 -- The People v. Johnny Bustamante.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J.  
(Not for Publication.)

Thursday, May 8, 2003

Division Two

**A098511 -- San Ferris v. Employment Development Department.**

By the Court: The petition for rehearing is denied. Appellant's motion to declare the independent contractor laws unconstitutionally vague is denied. Appellant's motion for oral argument is denied. Appellant's motion for published decision requiring justices who know the applicable law to apply it and to follow federal standards not requiring law to be cited by pro per litigants is denied. Appellant's motion to strike opening brief with 30 days to refile or disregard the noncompliance is denied. Appellant's motion to declare his workers independent contractors pursuant to restatement of agency section 220 and S.G. Borello & Sons is denied. Kline, P.J.

**A095799 -- The People v. Saul Hernandez.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A098280 -- The People v. Charles Robert Schneider.**

By the Court: The petition for rehearing is denied. Kline, P.J.

Division Four

**A099011 -- John Garamendi, as Insurance Commissioner, etc. v. Golden Eagle Insurance Corporation; Granite Management Corporation.**

The order denying Granite's claim is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A096650 -- The People v. Peng Nampha.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

Friday, May 09, 2003

Division One

**A101857 -- Brenda H. v. The Superior Court of Contra Costa County; Department of Children and Family Services et al., R.P.I.**

The petition for extraordinary writ is denied on the merits. The section 366.26 hearing is set for June 3, 2003. Therefore, this petition is final as to this court immediately. (Cal. Rules of Court, rule 24 (b)(3).) Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

**A097525 -- The People v. Donnell Lyntile Nunn.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A098503 -- The People v. Calvin Ray Hopper.**

We affirm the termination of probation, but remand with directions to correct the record to delete any finding that Hopper's performance on probation, or the termination of probation, was unsuccessful. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Division Four

**A100519 -- Ann Marmesh v. Thomas Kenefick et al.**

The judgment is reversed. The matter is remanded to the superior court for further proceedings consistent with this opinion. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Friday, May 09, 2003 (continued)

**A098765 -- The People v. Juan Nava Zaragoza.**

**A100843 -- In re Juan Nava Zaragoza, on Habeas Corpus.**

The judgment is affirmed. The petition for writ of habeas corpus is denied. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

**A100334 -- The People v. Antoine Lamar Blessett.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A100636 -- Gary Keith Hill v. 24 Hour Fitness USA, Inc.**

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A100194 -- Sierra Club et al. v. California Coastal Commission; Catellus Residential Group, R.P.I. and Respondent.**

By the Court: The opinion filed April 11, 2003 is modified as follows: (See order.) Appellant's petition for rehearing filed April 29, 2003, is denied. Appellant's request for judicial notice is granted as to Exhibits 1 and 2 and denied as to Exhibit 3. This modification effects no change in the judgment. Stevens, Acting P.J. (Certified for Partial Publication.)

Monday, May 12, 2003

Division One

**A099669 -- The People v. Julius Webster Collins, Jr.**

Defendant's concurrent sentence for vehicle theft is stayed pursuant to section 654. The trial court is directed to correct the abstract of judgment to reflect the modification of the sentence and to send a corrected copy to the Department of Corrections. In all other respects, the judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A100485 -- The People v. Miguel Rafael Cancero Espinoza.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

**A100775 -- The People v. William Thomas Burgess.**

The order revoking defendant's probation is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A093436 -- James E. Guigli v. The Regents of the University of California.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Five

**A098638 -- The People v. Warren Brown.**

The judgment is affirmed. The abstract of judgment shall be corrected to reflect a single one-year prior prison term enhancement pursuant to section 667.5, subdivision (b), rather than the 2 one-year prior prison terms pursuant to section 1170.12, subdivision (c)(2). The trial court is directed to send a copy of the corrected abstract of judgment to the Department of Corrections. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.) Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Monday, May 12, 2003 (continued)

**A100142 -- In re Sante U., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Fasa U.**

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J.  
(Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Tuesday, May 13, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Parrilli, J., Pollak, J., and I. Calanoc, Deputy Clerk.

A097171	Healthy Healing Enterprises et al., v. Nationwide Mutual Insurance Co. Cause called and argued by John Warner, counsel for appellants, and William Jacobson, counsel for respondent. Cause ordered submitted.
A096250	The People, v. Douglas Henry LeCorno. Cause called and argued by William Such, counsel for appellant, and Nancy Tung, counsel for respondent. Cause ordered submitted.
A096216  A096254	The People, v. Shawnte Darnell Gullledge. The People, v. Dameon Franklin, et al. Cause called and argued by Philip Brooks, counsel for appellant Gullledge, and Rodney Jones, counsel for appellant Franklin; Laurence Jeffrey, counsel for respondent. Cause argued and submission deferred. Pollak, J. left the bench after this case.

A097004	Commerce Holding Company, Inc. v. Top Grade Construction, Inc.
A097093	Commerce Holding Company, Inc. v. Hackett Pipeline, Inc.
A097005	Commerce Holding Company, Inc. v. Webcor Builders, Inc. et al. Corrigan, J. approached the bench. Cause called and argued by Duane Grummer, Dan Alweiss and Mark Lee for appellants; Beth Tenney for respondent. Cause ordered submitted. McGuiness, J. left the bench.
A101136	Hines Interests Limited Partnership, v. The Superior Court of San Francisco; Judith White. Pollak, J. approached the bench. Cause called and argued by George Yaron, counsel for petitioner, and Martin Glickfeld, counsel for real party in interest. Cause ordered submitted.
A086904	William Grove, v. Metz Baking Company, et al. Cause called and argued by John Shaffer, counsel for appellant, and Gary Lafayette, counsel for respondent. Cause ordered submitted.
A097003	Portola Plastering & Lathing Co., Inc. v. Webcor Builders, Inc. Cause called and argued by Paul Lahaderne, counsel for appellant, and Renee Berenson, counsel for respondent. Cause ordered submitted.
A099672	Social Services Agency, v. Jessica T. Cause called and argued by Meredith Fahn, counsel for appellant, and via teleconference by Anthony Scarr, counsel for respondent. Cause ordered submitted.
	Court recessed until 1:30 p.m.



COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Tuesday, May 13, 2003

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Corrigan, J., Parrilli, J., and I. Calanoc, Deputy Clerk.

A092716	The People, v. Gonzalo Serafin Alcala. Cause called and argued by counsel for appellant, Kathy Chavez via teleconference; and Julie Hokans, counsel for respondent. Cause ordered submitted.
A097968	The People, v. Oscar Manuel Alvarez. Cause called and argued by Roberta Simon, counsel for appellant, and Martin Kaye, counsel for respondent. Cause ordered submitted. Parrilli, J. left the bench after this case.
A098945	Cecilia S. Garfil, v. Bert Vega et al. Pollak, J. approached the bench. Cause called and argued by Herman Franck, counsel for appellants, and Gener Benitez, counsel for respondent. Cause ordered submitted.
COURT ADJOURNED	

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, May 14, 2003

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., Swager, J., and F. Abad, Deputy Clerk.

- A099905     Kimberly Alexander,  
                  v.  
                  Dennis A. Cortes.  
Cause called and argued by Wendy Getty, counsel for appellant, and James Jones, counsel for respondent. Cause ordered submitted.
- A097504     Mary B. Hanna,  
                  v.  
                  City of Berkeley, et al.  
Cause called and argued by Thomas Ho'Okano, counsel for appellant, and Zach Cowan, counsel for respondents. Cause ordered submitted.
- A100106     The Legal Defense Fund of the Peace Officers Research Association of California,  
                  v.  
                  City of Oakland.  
Cause called and argued by Alison Berry-Wilkinson, counsel for appellant, and Kathleen Salem-Boyd, counsel for respondent. Cause ordered submitted.
- A095207     Mario Reyes, et al.,  
                  v.  
                  Ford Motor Company, et al.  
Cause called and argued by Harry Wartnick, counsel for appellants, David Rice, counsel for respondent Ford Motor Company, and Alan Lazarus, counsel for respondent Allied Signal Company. Cause ordered submitted.

Court recessed until 2:00 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, May 14, 2003

The Court reconvened at 2:00 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., Swager, J., Margulies, J.; and F. Abad, Deputy Clerk.

Justice Margulies did not participate in argument of first case.  
Justice Swager did not participate in argument of second case.

A099106     Mike Noushfar,  
                 v.  
                 Iraj Shayesteh, et al.  
Cause called and argued by William Wilburn, counsel for appellant, and James Seymour, counsel for respondents. Cause ordered submitted.

A096646     The People,  
                 v.  
                 Colin Elder.  
Cause called and argued by Thea Greenhalgh, counsel for appellant, and Violet Lee, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Stein left the bench.

A097168     The People,  
                 v.  
                 Darryl Eugene Randle.  
Cause called and argued by James O'Connell, counsel for appellant, and Amy Haddix, counsel for respondent. Cause ordered submitted.

A099975      Felix Shrayber, et al.,  
                 v.  
                 Holiday Harbor, Inc., et al.  
                 Cause called and argued by Theresa Barfield, counsel for appellant, and  
                 Brian Chien, counsel for respondent. Cause ordered submitted.

Court recessed until 9:00am, Thursday, May 15, 2003.

Wednesday, May 14, 2003 (continued)

Division Two

**A098284 -- Rizalina Abellan v. Roseller Abellan.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A099173 -- The People v. Jarred J. Johnson.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A097460 -- Robert M. Levy v. Skywalker Sound et al.**

The summary judgment in favor of Skywalker Sound is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

**A099048 -- The People v. Curtis Lee Lawton Lewis.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A098062 -- In re Bradley M., a Person Coming Under the Juvenile Court Law. The People v. Bradley M.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A099389 -- In re Tierra W., a Person Coming Under the Juvenile Court Law. Cheryl W. v. Alameda County Social Services Agency.**

The June 24 order is reversed and this case is remanded to the trial court for further proceedings consistent with our decision. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Wednesday, May 14, 2003 (continued)

Division Five

**A099929 -- In re James F., a Person Coming Under the Juvenile Court Law. The People v. James F.**

The orders of the juvenile court are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, May 15, 2003

Division One

**A098415 -- Stefan E. Cheresnik, et al. v. City and County of San Francisco.**

By the Court: Since this court's April 23, 2003 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Marchiano, P.J.

**A098211 -- The People v. Mario Dominguez-Ornelas.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A098263 -- In re Melvin H., a Person Coming Under the Juvenile Court Law. The People v. Melvin H.**

The sex offender registration requirement is stricken from the dispositional order, and the juvenile court is directed to amend its records accordingly. As so modified, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A090520 -- Thomas Mitchell, et al. v. Holly Sugar Corp.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

**A099381 -- The People v. Richard Eeron Pledger.**

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, May 15, 2003

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., and Margulies, J.; and B. Robbins, Deputy Clerk.

A100327      Communities for Better Environment,  
                         v.  
                         California State Water Resources;  
                         Tesoro Refining and Marketing.  
Cause called and argued by Rick R. Rothman, counsel for appellant, and  
Chris Jensen, Certified Law Student, counsel for respondent. Cause  
ordered submitted.

At this point in the proceedings, Presiding Justice Marchiano left the bench  
and Justice Stein joined the bench. Justice Stein presided over the  
remainder of the calendar.

A099583      Iron & Silk, Inc.  
                         v.  
                         Champion Arts, Inc., et al.  
Cause called and argued by James V. Weixel, Jr., counsel for appellant,  
and David C. Phillips, counsel for respondent. Cause ordered submitted.

A097446      The People,  
                         v.  
                         Larry Joe McDougal.  
Cause called and argued by Julie Hokans, counsel for appellant, and  
Gabriel Bassan, counsel for respondent. Cause ordered submitted.



A098393 Richard Popkin, et al.

v.

City of American Canyon, et al.

Cause called and argued by Anthony C. Rodriguez, counsel for appellants, and Robert D. Pontelle, counsel for respondent City of American Canyon, and Elizabeth Mackenzie, counsel for respondent Napa County Information and Mediation Service. Cause ordered submitted.

A099971      Thomas Proulx, et al.,  
                 v.  
                 Steven Murray, et al.  
                 Cause called and argued by John P. Makin, counsel for appellants, and  
                 Stephen C. Gerrish, counsel for respondents.

Court adjourned.

Thursday, May 15, 2003 (continued)

Division Two

**A096750 -- Paul Preston v. Ron Yaros, et al.**

We affirm. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

**A099672 -- In re Julian W. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Jessica T.**

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Division Four

**A099061, A100046 -- Allan M. Berland, etc., et al. v. Ralph I. Miller et al.**

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on April 15, 2003, be modified as follows: (See order.) This modification does not effect a change in the judgment. The petition for rehearing is denied. Kay, P.J. (Not for Publication.)

**A098730 -- John Garamendi, as Insurance Commissioner, etc. v. Golden Eagle Insurance Corporation; Citation Insurance Company.**

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A100216 -- The People v. Carla Anne Soles.**

The order of probation, including the restitution award of \$69,350.28, is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Thursday, May 15, 2003 (continued)

**A099877 -- The People v. Leroy Alexander Warfield.**

The judgment of conviction is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Friday, May 16, 2003

Division One

**A098118 -- Friends of the Eel River et al. v. Sonoma County Water Agency; Pacific Gas and Electric Company, R.P.I. and Respondent.**

The judgment is reversed and the matter remanded to the trial court with directions to grant appellants' petition for a writ of mandate vacating the Agency's certification of the EIR and approval of the Project. Appellants are awarded costs on appeal. Margulies, J. I Concur: Marchiano, P.J. (See concurring and dissenting opinion by Swager, J.) (Certified for Publication.)

**A099106 -- Mike Noushfar v. Iraj Shayesteh.**

The judgment of dismissal is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Three

**A097004 -- Commerce Holding Co., Inc. v. Top Grade Construction**

**A097005 -- Commerce Holding Co., Inc. v. Hackett Pipeline Inc.**

**A097093 -- Commerce Holding Co., Inc. v. Webcor Builders, Inc., et al.**

The judgment is reversed. Costs are awarded to appellants. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A097171 -- Healthy Healing Enterprises, Inc., et al. v. Nationwide Mutual Insurance Co.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A101875 -- Kenneth Q. v. The Superior Court; Social Services Agency, R.P.I.**

The petition for extraordinary relief is denied on its merits. (See Cal. Const., art VI, § *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Since the permanency planning hearing is set for June 5, 2003, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(b)(3).) Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, May 16, 2003

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Sepulveda, Acting P.J., Rivera, J. and Ruvolo, J.; Pamela Aguilar, Deputy Clerk; Guardsmark Officer Michael Aurigui, Bailiff.

A097040      Lawrence Lucier et al.  
                 v.  
                 Philip Morris, Inc. et al.  
Cause called. Brett Schuman argued on behalf of appellants Lucier et al.  
Joseph Escher argued for respondents. Cause submitted.

At this point the Court reconstitutes itself from Sepulveda, Acting P.J., Rivera, J. and Ruvolo, J. to Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A097615      People  
                 v.  
                 Richard Shelton Knowles  
Cause called. Barry Karl argued for appellant Knowles. The Attorney General's Office did not appear. Cause submitted.

The Court adjourned at 10:20 a.m.

Friday, May 16, 2003 (continued)

Division Five

**A097639 -- Peter Crowell et al. v. San Francisco Bar Pilots Association  
et al.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J.  
(Not for Publication.)

Monday, May 19, 2003

Division One

**A097670 -- In re Estate of Norman O. Jenssen, Deceased.**

By the Court: Since this court's April 17, 2003 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Margulies, Acting P.J.

**A096646 -- The People v. Colin Elder.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

Division Two

**A096604 -- Harvest Church, et al. v. City of Concord, et al.**

By the Court: The petition for rehearing is denied. Kline, P.J.

**A093248, A093250, A094812 -- Alexandra Fernandez and Raquel Rodriguez v. County of Solano et al.**

The judgments are affirmed. Respondents Solano County, Donald Rowe, Moira Sullivan, Ken Anderson, Marcia Manley, John Ritter, Barbara Navolanic, and Barbara Hansen shall recover their costs on appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A098719 -- The People v. Clementina Jackson.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)



Monday, May 19, 2003 (continued)

Division Four

**A098285 --Self Health Resource Center v. Christopher Grell et al.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J.  
(Not for Publication.)

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

Monday, May 19, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J.; Gemello, J.; and Richard H. Sandvik, Deputy Clerk.

A09682    The People  
2            v.  
             Daniel Christopher Johnson  
             Argument waived.

A09912    In re Raymond Skinner on Habeas Corpus  
8  
             Cause called and argued by Susan D. Lee, counsel for petitioner, and by Chris Wattley, counsel for real party in interest. Cause ordered submitted.

A09920    In re Jeffrey F., a Person Coming Under the Juvenile Court Law  
6            The People  
             v.  
             Jeffrey F.  
             Cause called and argued by Brendon T. Ishikawa, counsel for appellant, and by Christopher Wei, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons leaves the bench and Justice Gemello takes his place.

A10046 David M. Goldberg

0 v.

Martin Jackson

Cause called and argued by David M. Goldberg, appellant in pro per, arguing via teleconference, and by Eugene Wolkkoff, counsel for respondent, arguing via teleconference. Cause ordered submitted.

Court adjourned at 10:28 a.m.

Tuesday, May 20, 2003

Division One

**A099905 -- Kimberly Alexander v. Dennis A. Cortes.**

The order dismissing appellant's petition is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A098771 -- The People v. Eric Michael Brown.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

**A095574 -- City and County of San Francisco v. George Applegate et al.**

By the Court: The petition for rehearing is denied. McGuinness, P.J.

**A086904 -- William Grove v. Metz Baking Company et al.**

Judgment is reversed on the first and second causes of action as to Metz only, and on the third cause of action as to all defendants. In all other respects the judgment is affirmed. The matter is remanded to the trial court for further proceedings consistent with this opinion. Grove shall recover his costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Tuesday, May 20, 2003 (continued)

**A101136 -- Hines Interests Limited Partnership v. The Superior Court of San Francisco County; Judith Wilhite, R.P.I.**

Let a peremptory writ of mandate issue directing respondent court to vacate its December 10, 2002 order denying petitioner Hines's motion for summary judgment and to enter a new and different order granting Hine's motion. The stay previously issued by this court shall be dissolved upon the issuance of the remittitur. (Cal. Rules of Court, rule 26.) Petitioner shall recover the costs it incurred in this writ proceeding. (Cal. Rules of Court, rule 56.4(a).) Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A097003 -- Portola Plastering & Lathing Co., Inc. v. Webcor Builders, Inc.**

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A093398 -- The People v. Carol Mardeusz.**

By the Court: Appellant's petition for rehearing and request for publication are denied. McGuiness, P.J.

Division Four

**A097649 -- The People v. Tung Van Tran.**

The judgment of conviction is affirmed. The sentence is modified by (1) striking the second enhancement under section 12022.8, and (2) reducing each of the two restitution fines to \$10,000. As so modified the judgment is affirmed. The trial court will issue an amended abstract of judgment and forward a certified copy thereof to the Department of Corrections. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Tuesday, May 20, 2003 (continued)

Division Five

**A100460 -- David M. Goldberg v. Martin Jackson.**

The judgment of dismissal is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A102473 -- Abinadab Israel et al. v. Bill Manuel Fernandez et al.**

By the Court: Appellants purport to appeal from the trial court's March 12, 2003 Order on Motion to Enforce Settlement. (See code Civ. Proc., § 664.6.) The challenged ruling granted respondents' motion to enforce as to the adult appellants, Abinadab Israel and Derica Jordan, and, accordingly, is appealable as to those appellants. (See *Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 205.) The challenged ruling did not grant respondents' motion to enforce as to the minor appellants, Yahcarah Grant, Electra Israel, and Chephzebah Israel (all of whom are appearing through their guardian ad litem Malkia Williams), and, hence, is not appealable as to those appellants. Therefore, the above-referenced appeal is dismissed as to appellants Yahcarah Grant, Electra Israel, and Chephzebah Israel only. Jones, P.J.

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

Tuesday, May 20, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J.; Gemello, J.; and Richard H. Sandvik, Deputy Clerk.

A09935    In re the Marriage of Joan Lynch and Anthony Pavone  
6            Anthony Pavone

v.

Joan Lynch

Cause called and argued by Benjamin L. Pavone, counsel for appellant, and by Paige L. Wickland, counsel for respondent. Cause ordered submitted.

A09976    County of Sonoma  
8            v.

Brian S. Tubbs

Cause called and argued by Patrick W. Coyle, counsel for appellant, and by Mary Dahlberg, counsel for respondent, arguing via teleconference. Cause ordered submitted.

A09844    The People  
3            v.

Jimmy Hickman

Cause called and argued by Thea Greenhalgh, counsel for appellant, and by Catherine A. Rivlin, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Stevens left the bench and Justice Gemello took his place.

A09969    Jay N. Nguyen et al.  
6            v.

Steve Aronovsky

Cause called and argued by Steve Aronovsky, appellant in pro per, arguing via teleconference, and by Kevin A. Taheny, counsel for respondent. Cause ordered submitted.





- A09983     James Conway  
4             v.  
              California Trust Deed, Inc.  
              Cause called and argued by James Conway, appellant in pro per, and by Dena Rosenberg Thaler, counsel for respondent. Cause ordered submitted.
- A10032     B. Wright  
0             v.  
              David Lazar et al.  
              Cause called and argued by B. Wright, appellant in pro per, and by David Newdorf, counsel for respondent. Cause ordered submitted.
- A09820     The People  
8             v.  
              Charles Wilkes Chapman  
              Cause called and argued by David S. Krueger, counsel for appellant, arguing via teleconference, and by Violet M. Lee, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Stevens took her place as Acting Presiding Justice.

- A09935     Billy Weiyu Loo et al.  
1             v.  
              Artichoke Joe's  
              Cause called and argued by Michael J. Daley, counsel for appellant, and by Donald Bussiere, counsel for respondent. Cause ordered submitted.
- A09901     In re the Estate of Marvin Jones, Deceased.  
3             Mark J. Jones  
              v.  
              Michael Jones  
              Cause called and argued by Mark Jones, appellant in proper, and by Jonathan Riordan Ferdon, counsel for respondent. Cause ordered submitted.

Court adjourned at 11:12 a.m.

Wednesday, May 21, 2003

Division One

**A098794 -- Frederick Giordano v. Brett Jensen, et al.**

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

Division Two

**A098513 -- The People v. John Christopher Alioto.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Wednesday, May 21, 2003

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A101715      Michael A.  
                 v.  
                 Superior Court  
                 Social Services Agency  
Cause called and argued by Margaret Pendergast, counsel for petitioner and Ellen Forman, Deputy City Attorney, counsel for real party in interest. Cause ordered submitted.

A095643      The People  
                 v.  
                 Robert Jessie Cruz, Jr.  
Cause called and argued by Mark D. Greenberg, counsel for appellant and Joan Killeen, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A100107      Frederick S. Mayer, et al.  
                 v.  
                 Gray Davis, etc.  
Cause called and argued by Lynn Carman, counsel for appellant and Christopher Krueger, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

The Court reconvened at 1:30 p.m. Present: Haerle, Acting, P. J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A092693     The People  
              v.  
              Joseph Ray Walker  
Cause called and argued by Richard Such, counsel for appellant and Jeff Bryant, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A097455     Franz Rosenberg  
              v.  
              City of Fremont, et al.  
Cause called and argued by Stanley Hilton, counsel for appellant and Dana Soong, counsel for respondent. Cause ordered submitted.

A097420     Egnacio R. Balinton  
              v.  
              City and County of San Francisco  
Cause called and argued by James Tritt, counsel for appellant and Ellen Forman, Deputy City Attorney, counsel for respondent. Cause ordered submitted.

A097568     In re RETIREMENT CASES  
A097692     JCCP No. 4049  
A097701     Cause called and argued by Elwood Lui, counsel for the Counties, Brenda  
A097705     Carlson, Deputy County Counsel, counsel for the Retirement Systems and  
A097744     Stephen Silver, counsel for the Plan Members. Causes ordered submitted.  
A097924  
A098686  
A100686  
A100721

Court recessed until Thursday, May 22, 2003 at 9:30 a.m.

Wednesday, May 21, 2003 (continued)

Division Three

**A099931 -- The People v. Marquee Sharod Austin.**

The judgment is modified to strike the \$1,000 restitution fine and to reinstate a \$200 restitution fine. In all other respects, the judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A100880 -- In re Bruce A. Cerny, on Habeas Corpus.**

The Board is directed to conduct a new parole suitability hearing at the earliest practicable opportunity and render a decision conforming with the following guidelines: The Board shall not consider as relevant for any purpose any record of petitioner's marijuana offenses that fall within the scope of sections 11361.5 and 11361.7, nor shall the Board rely on such offenses as the basis for denying, limiting, or postponing any opportunity, privilege, or right that petitioner may possess. Petitioner is entitled by statute to deny that he was convicted of such offenses, and petitioner's denial of these prior convictions, including any denials in the past, may not be considered as relevant by the Board for any purpose, including its determination of petitioner's suitability for parole. The Board shall issue a decision that complies with the guidelines established in *In re Rosenkrantz* (2002) 29 Cal.4th 616 and *In re Ramirez* (2001) 94 Cal.App.4th 549. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A098396 -- Kids Against Pollution et al. v. California Dental Association.**

The order denying the special motion to strike is reversed and the matter remanded with instructions to grant the motion and dismiss the action against CDA. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Certified for Publication.)

**A100112 -- The People v. Bradley John Krause.**

The judgment is modified to strike the \$1,000 restitution fine and to reinstate a \$400 restitution fine. In all other respects, the judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, May 21, 2003 (continued)

**A099169 -- The People v. Sol Garcia.**

Judgment affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J.  
(Not for Publication.)

Division Four

**A099713 -- The People v. Elmer Ayala.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A097516 -- The People v. Paul Miller, Jr.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A095771 -- The Snelling Company, LLC v. Calprop Corporation et al.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J.  
(Not for Publication.)

Division Five

**A098069 -- The People v. Jose Flores.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J.  
(Not for Publication.)

**A096822 -- The People v. Daniel Christopher Johnson.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, May 22, 2003

Division One

**A098499 -- The People v. Errol Bagner.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A099026 -- In re Patrice M., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency/Children Family Services v. Deborah M.**

The order terminating parental rights is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A099762 -- Ray A. Robinson, Sr. v. Bay Ship & Yacht Co.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A099975 -- Felix Shrayber et al. v. Holiday Harbor, Inc.**

The judgment is reversed. Margulies, J. I Concur: Swager, J. (See concurring opinion by Marchiano, P.J.) (Not for Publication.)

Division Two

**A100431 -- The People v. Javier Alvarez Hernandez.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Thursday, May 22, 2003

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P. J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

- A094835     The People  
              v.  
              Carleton Cook  
Cause called and argued by David Morse, counsel for appellant and Catherine McBrien, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A095862     The People  
              v.  
              Stanley Bennett Hines  
Cause called and argued by Neil Rosenbaum, counsel for appellant and Jeffrey Laurence, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A098623     Reggie Wong  
              v.  
              Ed Wong  
Cause called and argued by John G. Hanlin, counsel for appellant and Alex Weyand, counsel for respondent. Cause ordered submitted.
- A094582     The People  
              v.  
              Eric Chih Hong Hsu  
Cause called and argued by V. Elizabeth Grayson, counsel for appellant and Joan Killeen, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.



Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

- A099089      The People  
v.  
Andrew S., a Minor  
Cause called and argued by Paul Kleven, counsel for appellant and Catherine Rivlin, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A097719      The People  
v.  
Antonio Fernandes  
Cause called and argued by Renee Torres, counsel for appellant and Amy Haddix, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A097622      Estate of Al Russo, Deceased  
Gene Austin Cain  
v.  
Kym Jackson Russo  
Cause called and argued by Hugo Torbet, counsel for appellant and Clinton Killian, counsel for respondent. Cause ordered submitted.
- A099312      John C. Paxton  
v.  
James Giller, et al.  
Cause called and argued by John Paxton, appellant in propria persona and Fred Feller, counsel for respondent. Cause ordered submitted.
- A099653      Ronald Giampaoli, et al.  
v.  
Philip M. Wright, et al.  
Cause called and argued by Russell Rowen, counsel for appellants and (telephonically) by Karen Winters, counsel for respondents. Cause ordered submitted.

COURT ADJOURNED.

Thursday, May 22, 2003 (continued)

Division Four

**A100237 -- The People v. Kevin Martin Kincaid.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J.  
(Not for Publication.)

Division Five

**A100320 -- B. Wright, in pro. per. v. David Lazar et al.**

The order denying the motion to vacate the judgment is reversed, and the matter is remanded with directions to grant the motion and to conduct further proceedings on the motion for summary judgment. Costs on appeal are awarded to appellant. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, May 23, 2003

Division Two

**A097691 -- Airport Parking Services, Inc. v. City of San Bruno.**

The judgment is affirmed. San Bruno is awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A099448 -- Mark H. Gainer v. Linda M. Nolan.**

The judgment is affirmed. Gainer is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A0910 44 -- The People v. Edward S. Kennedy.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A102187 -- Vittoria M. v. The Superior Court of Contra Costa County; Contra Costa County Department of Children and Family Services, R.P.I.**

The petition is denied on the merits. (Cal. Const., art. VI, § *Kowis v. Howard* (1992) 3 Cal.4th 888 [subsequent challenge by appeal barred]; § 366.26 subd. (1)(1).) Given the nearness of .26 hearing set for July 9, our decision is final as to this court immediately (rule 24(b)(3)). Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE  
Friday, May 23, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Parrilli, J., Pollak, J., and I. Calanoc, Deputy Clerk.

McGuiness, P.J. announced that Corrigan, J. is unavailable for oral argument this date but will have access and will review the taped proceedings. Counsel agreed to waive Justice Corrigan's presence.

A095426 The People v. Timoteo Dominguez Ayala.

A095411 The People v. Natividad Dominguez Ayala.

Cause called and argued by Scott Drexel, counsel for appellant Timoteo Ayala, George Benton, counsel for appellant Natividad Ayala, and Ryan McCarroll, counsel for respondent People. Cause ordered submitted.

A096752 The People v. Curtis LeCompte.

A096772 The People v. Victor Torres.

Cause called and argued by Michael Sattris, counsel for appellant Victor Torres, and Jeremy Friedlander, counsel for respondent People. Cause ordered submitted.

A093424 Ray Kinsman et al. v. Unocal Corporation.

A093649 Ray Kinsman et al. v. Unocal Corporation.

Cause called and argued by Robert Channel, counsel for appellant, and Harry Wartnick, counsel for respondents. Cause ordered submitted.

A091576 The People,

v.

Ted Vu Nguyen et al.

Cause called and argued by Scott Sugarman, Stephen Bedrick, Colleen Rohan, Joseph Shevelson (via teleconference), counsel for appellants; and, Catherine Rivlin, counsel for respondent. Cause ordered submitted.

A092787 The People,

v.

Jose Humberto Marin.

Cause called and argued by Kyle Gee, counsel for appellant, and David Rose, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED



Friday, May 23, 2003 (continued)

Division Four

**A097040 -- Laurence Lucier et al. v. Philip Morris USA Inc. et al.**

The trial court's order disqualifying the Brobeck firm from representing plaintiffs is vacated, and the matter is remanded with directions to the trial court to dismiss the disqualification motion for having become moot prior to its final determination on appeal. We express no opinion on the merits of the appeal.

Rivera, J. We Concur: Sepulveda, Acting P.J., Ruvolo, J.\* (Not for Publication.)

\*Associate Justice of the Court of appeal, First Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A099938 -- In re Casey N., a Person Coming Under the Juvenile Court Law. The People v. Casey N.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A095534 -- The People v. Eligio Ortiz.**

The judgment of the superior court is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Certified for Publication.)

Division Five

**A099013 -- Estate of Marvin Jones, Deceased.**

Although we are reluctant to prolong this contentious and lengthy probate proceeding, we reverse the award of extraordinary fees and remand for further proceedings consistent with this opinion. In all other respects, the orders are affirmed. In the interest of justice, each side shall bear its own costs. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

**A099437 -- In re Tasheila M., a Person Coming Under the Juvenile Court Law. The People v. Tasheila M.**

The order is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Friday, May 23, 2003 (continued)

**A099309 -- Barbara San Martin v. Antioch Schools Federal Credit Union et al.**

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on April 25, 2003, be modified as follows: (See order.) There is no change in the judgment. Respondents petition for rehearing is denied. Jones, P.J. (Not for Publication.)

**A099696 -- Jan N. Nguyen et al. v. Steve Aronovsky, in pro. per.**  
The Court.\* The trial court order is affirmed. (Not for Publication.)

\*Before Jones, P.J., Simons, J., and Gemello, J.

**A101855 -- Sheila Anne S. v. The Superior Court of Marin County; Marin County Department of Health and Human Services et al., R.P.I.**

The order to show cause is discharged, and the petition is denied on its merits. (Cal. Const., art. VI, § 14; Cal. Rules of Court, rule 39.1(B)(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The request for stay is also denied. Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26

(§ 366.26 subd. (I).) Because the section 366.26 hearing is set for June 10, 2003, our decision is final as to this court immediately. (Rule 24(b)(3).) Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Tuesday, May 27, 2003

Division Two

**A099571 -- The People v. Vincent Dixon.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Four

**A096730 -- The People v. Larry Arnold Johnson.**

The judgment of conviction is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A099768 -- County of Sonoma v. Brian Tubbs.**

The order is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A097349 -- The People v. Daniel Patrick Hard.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Certified for Partial Publication.)



Wednesday, May 28, 2003

Division One

**A093091 -- The People v. David A. DeLaSantos.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A099671 -- In re Armon G., a Person Coming Under the Juvenile Court Law. The People v. Armon G.**

The Terms and Conditions of Probation shall be corrected to reflect the juvenile court's order that Armon obtain the permission of his parent or probation officer prior to exceeding his curfew. In all other respects, the judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A097504 -- Mary B. Hanna v. City of Berkeley et al.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A099369 -- In re Jake J. et al., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services v. Scott J.**

The orders of May 10, 2002 and June 21, 2002 are reversed for the limited purpose of remanding the matter to the juvenile court for the filing of notices and return receipts under the ICWA. The court shall determine from that record whether the ICWA notice was sufficient. If the court determines notice was sufficient, the orders of May 10, 2002 and June 21, 2002 shall be reinstated. If the court finds that notice was insufficient, the court shall ensure that sufficient notice is made. Finally, should the court determine that Allan and Jake are Indian children, further proceedings consistent with ICWA must be held. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A097184 -- The People v. Patrick Jamaine Nunn.**

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Wednesday, May 28, 2003 (continued)

Division Two

**A101713/A101715 -- In re Michael A., Jr., a Person Coming Under the Juvenile Court Law. Alice D. and Michael A. v. San Francisco Superior Court, San Francisco Department of Human Services, R.P.I.**

The consolidated petitions for extraordinary relief are denied on their merits. (See Cal. Const., art VI, § *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioners are barred in any subsequent appeal from making further challenges to the order setting a hearing under section 366.26 (See § 366.26, subd. (1)(2).) Since the permanency planning hearing is set for June 18, 2003, this opinion is final as to this court forthwith. Rule 24(b)(3).) Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A097188 -- The People v. Donald Plyler.**

The appeal is dismissed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A098908 -- San Francisco Baykeeper v. California State Water Resources Control Board et al. City of Petaluma et al., R.P.I.**

The order appealed from is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A098520 -- The People v. Justin Michael Wojcik.**

The reverse appellant's convictions for possession of marijuana for sale (§ 11359) and cultivation of marijuana (§ 11358). In all other respects, appellant's convictions are affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J.

Division Three

**A099253 -- In re Justin P., a Person Coming Under the Juvenile Court Law. Contra Costa County Employment and Human Services Department v. Orlando P.**

The order of May 29, 2002, is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Wednesday, May 28, 2003 (continued)

**A098983 -- Jeffrey Roberts v. Regents of the University of California, et al.**

The April 2, 2002, judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

**A096655 -- The People v. Nghia Trong Tran Buckius.**

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A099599 -- In re Lincoln F., a Person Coming Under the Juvenile Court Law. The People v. Lincoln F.**

The judgment is affirmed as well. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Thursday, May 29, 2003

Division One

**A099750 -- In re Desire H., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Service Department v. Carolyn H., et al.**

The order terminating appellants' parental rights is reversed for the sole and limited purpose of enabling a remand to the juvenile court for the filing of the notices and return receipts, and for the court to determine from that record whether the ICWA notice was sufficient. If the court makes that determination, the order terminating parental rights is reinstated. If the court finds that notice was insufficient, the court must ensure that sufficient notice is made. And as noted, if from tribal notice the court should determine that Desire is an Indian child covered by ICWA, the court must proceed accordingly. This remand, by itself, shall have no effect on any issue regarding the custody of Desire, or any issue in the proceedings other than the sufficiency of notice. We direct the juvenile court to comply with this remand within the earliest possible time. Marchiano, P.J. I Concur: Stein, J. (See dissenting opinion by Swager, J.) (Not for Publication.)

**A099583 -- Iron & Silk, Inc. v. Champion Arts, Inc., et al.**

The judgment is affirmed. Costs are awarded to Defendants. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A100106 -- The Legal Defense Fund of the Peace Officers Research Association of California v. City of Oakland.**

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A095207 -- Mario Reyes, Sr., et al. v. Ford Motor Co., et al.**

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A100342 -- The People v. Caleb White.**

The order permanently revoking appellant's probation is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Thursday, May 29, 2003 (continued)

Division Two

**A098494 -- The People v. Thomas John Mariani.**

**A101898 -- In re Thomas John Mariani, on Habeas Corpus.**

The judgment is affirmed and the petition for a writ of habeas corpus is denied. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A102211 -- Gene Alford Willis v. Bank of America.**

By the Court: The petition for rehearing is denied. Kline, P.J.

Division Three

**A095411 -- The People v. Natividad Dominguez Ayala.**

**A095426 -- The People v. Timoteo Dominquez Ayala.**

The judgments are affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A096752 -- The People v. Curtis LeCompte.**

**A096772 -- The People v. Victor Torres.**

The judgment against LeCompte is affirmed. The judgment against Torres is reversed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A101734 -- Jamie M. v. The Superior Court of Lake County; Lake County Department of Social Services, R.P.I.**

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Since the permanency planning hearing is set for June 2, 2003, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Thursday, May 29, 2003 (continued)

**A098241 -- Joyce M. Vanman v. City and County of San Francisco.**

The judgment is reversed. The matter is remanded to the superior court with instructions to enter a new order denying the City's motion for summary judgment and its alternative motion for summary adjudication of plaintiff's cause of action for violations of FEHA. Plaintiff shall recover her costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A097615 -- The People v. Richard Sheldon Knowles.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A098068 -- The People v. Keith Stout.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

**A098208 -- The People v. Charles Wilkes Chapman.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A099206/A099207 -- In re Jeffrey & Stephen F., Persons Coming Under the Juvenile Court Law. The People v. Jeffrey & Stephen F.**

The dispositions are affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Friday, May 30, 2003

Division One

**A101226 -- The People v. David William Pimentel.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A097168 -- The People v. Darryl Eugene Randle.**

The judgment convicting defendant of second degree murder is reversed. The cause is remanded for a new trial on that count. In all other respects, the judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Certified for Publication.)

**A100327 -- Tesoro Refining and Marketing Company v. Communities For a Better Environment and San Francisco Baykeeper.**

The judgment granting the petition for writ of mandate on the first issue of the petition is reversed. The cause is remanded to the superior court for determination of the second and third issues of the petition. Each party shall bear its own costs of this appeal. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A100020 -- In re Harry C., a Person Coming Under the Juvenile Court Law. The People v. Harry C.**

The order adjudicating defendant a continued ward of the court pursuant to section 602 and placing him at the CYA is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A098436 -- The People v. Gregory Lawrence Copeland.**

By the Court: The petition for rehearing is denied. Kline, P.J.

Friday, May 30, 2003 (continued)

**A097756 -- In re Antoine F., a Person Coming Under the Juvenile Court Law. The People v. Antoine F.**

We affirm. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A100903 -- In re Freddy M., a Person Coming Under the Juvenile Court Law. The People v. Freddy M.**

The order adjudicating defendant a ward of the court pursuant to section 602 and placing him at the CYA is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A099032 -- In re Josef M., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Rayna G.**

The juvenile court's May 9, 2002 order terminating mother's parental rights is reversed, and the matter is remanded for further dependency proceedings. This appeal is dismissed as abandoned, and the remittitur shall issue forthwith. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A097455 -- Franz Rosenberg v. City of Fremont.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

**A097968 -- The People v. Oscar Manuel Alvarez.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A100089 -- The People v. Robert Warren Coats.**

The order of restitution in the amount of \$19,700.55 is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)



Friday, May 30, 2003 (continued)

**A098945 -- Cecilia S. Garfil v. Bert Vega et al.**

In response to this court's inquiries at oral argument, neither party was aware whether appellants' actions in this case were ever submitted to the State Bar for investigation of misconduct. We therefore order respondent's counsel to forward a copy of this opinion to the State Bar. The judgment is affirmed. Garfil is to recover her costs on appeal. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A100195 -- The People v. Ronald Alan Luimit.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A100023 -- In re Kayla M., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Andrea M.**

The July 29, 2002, orders terminating Andrea M.'s parental rights are affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A098472 -- The People v. Arthur Parnell III.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A096989 -- The People v. Joga Singh Sandher.**

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

**A090426 -- The People v. Jack Bokin.**

The case is remanded to the trial court for the limited purpose of resentencing in accordance with this opinion. In all other respects, the judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Friday, May 30, 2003 (continued)

**A099884 -- The People v. Gary Ross Cassano.**

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A098207 -- The People v. James Brian Weaver.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, May 30, 2003

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kay, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

- A099894     Kimberly Taylor  
                 v.  
                 Daniel Wister  
Cause called. Appellant Taylor's counsel, who had requested oral argument, was not present in the courtroom. Respondent's counsel was ready to proceed. Cause continued.
- A099912     St. Paul Mercury Insurance Company  
                 v.  
                 Vahdani Construction Company, Inc.  
Cause called. John D. Hook argued for appellant St. Paul. Steven D. Werth argued for respondent Vahdani. Cause submitted.
- A099894     Kimberly Taylor  
                 v.  
                 Daniel Wister  
Cause called again. Mary Williams argued for appellant Taylor. John Davis teleargued for respondent. Cause continued.
- A100318     Jon W. Elvin  
                 v.  
                 Arthur Elvin  
Cause called. John Hanlin, who had requested oral argument, appeared for appellant Arthur Elvin. Henry D. Froneberger appeared for respondent Jon Elvin. Appellant waived oral argument in the courtroom. Cause submitted.

At this point the Court reconstitutes itself from Kay, P.J., Sepulveda, J. and Rivera, J. to Kay, P.J., Reardon, J., and Rivera, J.

- A097615     People  
              v.  
              Douglas H.  
Cause called. Paul Kleven argued for appellant Douglas H. Linda Murphy argued for respondent. Cause submitted.
- A094272     Dead Kennedys et al.  
              v.  
              Jello Biafra  
Cause called. Paul Raynor Keathing argued for appellants/cross-respondents. David Given argued for appellants
- A094945     People  
              v.  
              Curtis Odham  
Cause called. Geri Green argued for appellant Curtis Odham. No appearance by respondent's counsel.  
The Court adjourned at 10:20 a.m.

Friday, May 30, 2003 (continued)

Division Five

**A099128 -- Gray Davis, as Governor, etc., et al. v. Raymond Skinner.**

The order granting Skinner's petition for a writ of habeas corpus and ordering his release from prison is reversed. This court's order dated June 27, 2002, staying Skinner's release from prison, shall dissolve upon issuance of the remittitur. (See Cal. Rules of Court, rule 26.) Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A094710 -- The People v. Ryan Lewis Williams.**

The judgment is affirmed. The abstract of judgment is ordered to be corrected to reflect an on-bail enhancement, pursuant to section 12022.1, only as to count 1 (murder, § 187), and not as to count 2 (assault with a firearm, § 245, subd. (a)(2)). The trial court is directed to send a copy of the corrected abstract of judgment to the Department of Corrections. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)